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May 17, 2007

**Via E-Mail and U.S. Mail**

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Re: *De Minimis* Settlement - RRG/Clayton and Sauget Area 2 Site, 1 Mobile Avenue,  
Sauget, Illinois

Dear Mr. Martin and Ms. Carney:

This letter is to follow up on recent calls from Gene Schmittgens and me to Mr. Martin, requesting a meeting with the United States Environmental Protection Agency ("U.S. EPA") with respect to the Sauget Area 2 Site, located within the corporate boundaries of Sauget, Cahokia, and East St. Louis, Illinois. We request that U.S. EPA meet with us and representatives of those listed on Attachment A to discuss a *de minimis* settlement of potential claims against our clients and others similarly situated for allegedly contributing to the soil and groundwater contamination at the Sauget Area 2 Site. (See Attachment A for a list of the parties who are requesting a meeting to discuss a *de minimis* settlement.)

Beginning at various times during and after 1980, each of the parties in Attachment A was an alleged customer of the RRG/Clayton solvent recycling facility in Sauget, Illinois (hereinafter such alleged customers are referred to as the "RRG/Clayton Customers"). Each of the RRG/Clayton Customers received a General Notice Letter dated December 22, 2006 from U.S. EPA and/or a demand letter from the Sauget Area 2 Site Group ("Sauget Group") and/or a demand letter from the major Sauget Area 2 responsible parties, Pharmacia Corporation ("Pharmacia") and Solutia, Inc. ("Solutia"). The letters allege potential responsibility for the purported impact caused by the historic operations at the RRG/Clayton facility on the Sauget Area 2 groundwater (U.S. EPA, Sauget Group, Pharmacia and Solutia letters) and soil (Sauget Group, Pharmacia and Solutia letters).

U.S. EPA's notice letter encouraged each recipient to contact the Sauget Group to discuss the recipient's "willingness to help perform or finance the Area 2 RI/FS... as well as any other response activities that U.S. EPA has determined or will determine are required to address groundwater contamination at the Site." Several recipients of U.S. EPA's notice letter have, in fact, contacted the Sauget Group. The terms and conditions that the Sauget Group seeks to impose, however, for participation in the Sauget Group

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are totally disproportionate to the possible negligible impact, if any, that the RRG/Clayton Customers' materials at the RRG/Clayton recycling facility may have had on the Sauget Area 2 Site. For example, the RRG/Clayton Customers were alleged customers of the RRG/Clayton operation only after the Sauget disposal facilities were closed. Furthermore, the potential ground water effects on the Sauget Area 2 Site of the RRG/Clayton Site, if any, are minimal, as discussed in more detail below. The transaction costs associated with participation in the Sauget Group's non-binding adjudicatory-format allocation process will far exceed any reasonable allocation of response costs to our clients.

Congress' and U.S. EPA's *de minimis* settlement policy is designed to eliminate the disproportionate burdens on *de minimis* contributors and to do so early in the response process. The RRG/Clayton customers are, at most, *de minimis* contributors to groundwater impacts at the Sauget Area 2 Site. Although Mr. Martin indicated that U.S. EPA will not be issuing administrative orders at this time to the RRG/Clayton Customers and therefore a *de minimis* settlement is premature, Pharmacia and Solutia are threatening imminent litigation and supporting their threats, in part, based on EPA's issuance of notice of liability letters. Moreover, the Sauget Group has merely offered to allow the RRG/Clayton Customers to join their group if RRG/Clayton Customers agree to underwrite a significant portion of the past and future costs of the Sauget Group on an "interim basis." Joining that group also would require a commitment to become involved in a very expensive and protracted non-binding process to determine a "final allocation." We are concerned that the non-binding allocation process may lead to more costly litigation.

The Sauget Group and Pharmacia and Solutia have not expressed any willingness to settle with the RRG/Clayton Customers on a *de minimis* basis. Based upon actual litigation experience with this Site, the RRG/Clayton Customers' transaction costs will significantly exceed their fair share, if any, for Sauget Area 2 response activities unless U.S. EPA enters into a *de minimis* settlement with the RRG/Clayton Customers in the near future. Based upon U.S. EPA's *de minimis* and *de micromis* settlement policies, and for the reasons set forth in this letter, among others, we strongly urge U.S. EPA to enter into *de minimis* (if not *de micromis*) settlements with the RRG/Clayton Customers.

### **U.S. EPA's De Minimis Policy**

"It has been EPA's longstanding policy to enter into settlements with *de minimis* parties as early as possible in the Superfund response process." ("Interim Guidance on the Ability to Pay and *De Minimis* Revisions to CERCLA § 122 (g) by the Small Business Liability Relief and Brownfields Revitalization Act," U.S. EPA, 5/17/2004, p.3). CERCLA § 122(g)(1)(A) authorizes EPA to enter into *de minimis* settlements with

parties who contributed hazardous substances to a facility that are minimal, both in terms of volume and toxicity, relative to other hazardous substances at the Site.

In enacting this provision, Congress signaled its intention to mitigate the impact of Superfund liability on the smallest contributors to a Site. While these parties still share in the responsibility for the Site, this provision permits EPA to reach settlements with them early in the process and thereby reduce the potentially substantial transaction costs they might otherwise expend. In addition to reducing transaction costs and resolving the liability of small volume contributors, *de minimis* settlements also serve to reimburse the Agency's past costs and provide funds for future site cleanup.

("Standardizing the *De Minimis* Premium," Memorandum from Bruce Diamond, Director, Office of Site Remediation Enforcement, to Waste Management Division Directors, Regions I-X, Regional Counsel, Regions I-X, July 7, 1995.) "New CERCLA § 122(g)(10) requires EPA to notify a person of its *de minimis* eligibility under section 122(g)(1) '[a]s soon as practicable after receipt of sufficient information to make a determination.'" (Interim Guidance, 5/17/2004, p.7.) For the reasons set forth below, as well as other information we will present to EPA at the meeting, there is more than sufficient information available for EPA to make a *de minimis* determination with respect to the RRG/Clayton Customers.

**Any Hazardous Substance Contributed by the RRG/Clayton Customers  
is Minimal in Volume and Toxicity Compared to that of the  
Major Sauget Group PRPs**

The 7-acre RRG/Clayton facility is encircled on three sides by the 314-acre Sauget Area 2 Site, which consists of four landfills, a filled lagoon and four inactive sludge dewatering lagoons. The units within Sauget Area 2 have been designated by U.S. EPA as Sites O, P, Q, R, and S. (See Figure 1.) Unlike the RRG/Clayton recycling operation, where the vast quantity of materials shipped to that facility were reclaimed and shipped offsite as product, the Sauget Area 2 Sites were landfills and waste lagoons.

Moreover, the RRG/Clayton facility is downgradient of the massive 311-acre W.G. Krummrich Chemical Plant owned by Solutia (formerly Monsanto). (See Figure 1.) The W.G. Krummrich Plant has manufactured chemicals for the past 100 years. Its numerous products have included PCBs, chlorobenzenes, phenols, acids, nitrated organic chemicals, sulfides, phosphates and numerous other chemicals. (See *In The Matter of: Sauget Area 2 Superfund Site Sauget, Cahokia, and East St. Louis, Illinois*, Administrative Order for Remedial Design and Interim Remedial Action, V-W-02-C-716

("Groundwater Order"), ¶ 17.c). The facility is subject to a RCRA Corrective Action Order. The 71 solid waste management units within the W.G. Krummrich Plant include, among others, 8 landfills, 3 surface impoundments, an incinerator, 5 drum or container storage areas, numerous above-ground and underground tanks, an oil/water separator, and a truck washing area.

Also upgradient of Site R and the RRG/Clayton Site is Sauget Area 1, Site I, which is an inactive landfill that occupies approximately 19 acres and is located south and east of the W.G. Krummrich Plant. (See Figure 1.) According to U.S. EPA, it was used as an industrial, chemical and municipal waste disposal site from 1931 to 1957. Site I also served as a disposal area for contaminated sediments from historic dredging of Dead Creek and was connected to Site H under Queeny Avenue. Together, Sites I and H were known to be part of the "Sauget-Monsanto Landfill" with a waste volume of approximately 680,000 cubic yards. (See Groundwater Order, ¶ 17.a.)

### **Other Industrial Sources**

In addition to Solutia's monochlorobenzene manufacturing facilities, the Sauget Group has identified 12 heavy industrial facilities as upgradient of Sauget Area 2. We will gladly provide more information to EPA regarding these upgradient facilities when we meet.

(See Figure 3, Executive Summary, Remedial Investigation/Feasibility Study ("RI/FS") Report, January 30, 2004, prepared by URS for the Sauget Group ("RI/FS Report"), p. ES-2 and Figure 1.)

### **De Minimis Evaluation**

Virtually every comparison that can be made of the RRG/Clayton facility to the Sauget Area 2 Site and surrounding source areas, supports the obvious conclusion that the impact, if any, from RRG/Clayton on the Sauget Area 2 Site is *de minimis*. Indeed, based on this information, it is more likely that the groundwater at RRG/Clayton has been adversely impacted by upgradient sources.

### **Acreage Comparison**

RRG/Clayton's total acreage is equivalent to approximately 2.22% of the acreage of Sauget Area 2 and if the W.G. Krummrich Plant acreage is added to the Sauget Area 2 total, RRG/Clayton's total acreage is equivalent to only approximately 1.12 % of the total acreage.

ACREAGE COMPARISON	
SITE	ACREAGE
Site O	20
Site P	28
Site Q	225
Site R	36
Site S	5
Total Area 2	314
W.G. Krummrich Plant	311
Area 1, Site I	19
RRG/Clayton	7

### Impacted Soil/Waste Comparison

The RI/FS Report included estimates of the total waste volumes that would be generated if an excavation and disposal remediation option was chosen for the Sauget Area 2 Sites. A response action is currently being conducted at the RRG/Clayton Site to address impacted soil. In contrast to the liquids recycling operations and other operations at RRG/Clayton, the Sauget Area 2 Sites are solid waste disposal facilities. *When the RRG/Clayton soil response action is compared to the waste investigated in the RI/FS for the Sauget Area 2 Sites, the volume of soil at RRG/Clayton is only 0.12% of the combined total estimated waste at the Sauget Area 2 Sites.*

Waste Volume Summary <sup>1</sup>				
Site	Areal Extent (ft <sup>2</sup> )	Depth (ft)	Total (ft <sup>3</sup> )	Total (yd <sup>3</sup> )
O North	135,230	12.0	1,622,760	60,102
O North	1,222,245	12.0	14,666,940	543,220
O South	185,941	12.0	2,231,292	82,640
P	751,487	22.8	17,133,904	634,589
Q North	2,271,708	12.8	29,077,862	1,076,958
Q Central	2,930,136	16.7	48,933,271	1,812,343
Q South	2,922,826	10.3	30,105,108	1,115,004
Q Ponds	582,268	0.0	0	0
R	1,045,960	22.8	23,847,888	883,255
S	35,684	8.5	303,314	11,234
<b>Totals</b>	<b>12,083,485</b>		<b>167,922,339</b>	<b>6,219,346</b>
Supplemental Soil and Waste Volume Summary				
Site	Areal Extent (ft <sup>2</sup> )	Depth (ft)	Total (ft <sup>3</sup> )	Total (yd <sup>3</sup> )
Area 1, Site I	827,640		680,827	
W.G. Krummich <sup>2</sup>	4,356,000			
RRG/Clayton <sup>3</sup>	<b>69,696</b>	3.0	209,088	<b>7,744</b>

Notes:

1. Adapted from Sauget Area 2 RI/FS Report, Table 6-1, Waste Volume Summary.
2. The areal extent for the W.G. Krummrich site was based on a conservative estimate of 100 acres of the site's total 311 acres. See <http://www.solutia.com/pages/krummrich/plantabout.asp>.
3. The areal extent for RRG/Clayton is based on the RRG/Clayton Soils Group proposed 1.6 acre cap covering impacted areas of the site contained in the draft Work Plan Amendment sent to U.S. EPA representatives Kevin Turner and Tom Turner on November 30, 2006. The three foot depth was determined to be protective for direct contact based on the Illinois TACO standards.

### **Groundwater Sources Volume and Toxicity Comparison**

Any potential impact to groundwater from RRG/Clayton would be insignificant in volume compared to the contribution from other source areas and would be the same general constituents from the major source areas contributing to groundwater contamination at the Site. Indeed, it appears that it is the upgradient sources that are largely responsible for the groundwater condition at RRG/Clayton. These conclusions are contained in documents currently in U.S. EPA's records for the Sauget Area 2 Site, W.G. Krummrich Plant, RCRA Corrective Action Site, and RRG/Clayton Site, as follows:

- *RRG/Clayton Site groundwater has been and continues to be impacted by upgradient sources, including Site O, the W.G. Krummrich Plant and Sauget Area 1, Site I. See:*

Figures 2 and 3 show a VOC and SVOC plume migrating onto RRG/Clayton Site.

Figure 1, shows the Solutia W.G. Krummrich Plant is the upgradient facility from which the plume is migrating as reflected on Figures 2 and 3.

Figures 4.a-i showing the total VOC and total SVOC concentrations and distribution for the shallow, middle and deep units from the W.R. Krummrich Site to the Mississippi River.

RI/FS Report, Section 6.1, Site O, wherein Site O groundwater sample results are compared to sample results from the W.G. Krummrich facility. The Sauget Group concludes that Site O groundwater is impacted by an upgradient source. (Site O is immediately upgradient of RRG/Clayton.)

- *RRG/Clayton Site groundwater is from time to time impacted when the level of the Mississippi causes backflow from Site R through the RRG/Clayton Site. The Record of Decision for the Groundwater Order reflects that when flood stages occur on the Mississippi, groundwater flows from west to east. Groundwater elevation has been documented to be higher at times at the river and Site R than*

on the east side of Route 3, which is upgradient or east of the RRG/Clayton site. (See Groundwater Record of Decision, p. 17).

The Draft RI/FS Sauget Area 2, dated 1-30-04, states as follows:

- "Upgradient groundwater concentrations were generally higher than downgradient concentrations at Site O and Site S." (Draft RI/FS 6-26, 6-27) (Site O is downgradient from the W.G. Krummrich Plant and Site I and immediately upgradient of RRG/Clayton. Site S is on the south border of the of RRG/Clayton facility (See Figure 1).)
- "Downgradient groundwater concentrations were generally higher than upgradient concentrations at Sites P, Q North and R."
- Three groundwater plumes exist on the Sauget Area 2 Site:

Plume 1 –located in the central part of the Site along the east side, underlying Sites O, P, and S. This plume originates east of Illinois, Route 3, and is coming onto the Sauget Area 2 Site from upgradient sources. (Draft RI/FS, 7-2)

Plume 2 – originates at Site R (Draft, RI/FS 7-2), and

Plume 3 – originates from an unidentified upgradient source and migrates through the southern portion of Site Q (Draft RI/FS, 7-3).

(See Figures 2 & 3 for the three plumes from "unnamed" upgradient sources. See Figure 1, showing Solutia's W.G. Krummrich Plant and Sauget Area 1, Site I upgradient of Sites O, P, and S and RRG/Clayton, and Figure 5, documenting the groundwater flow direction from the W.G. Krummrich Plant through Site O, RRG/Clayton through Site R to the Mississippi.)

As set forth in paragraph 12 of the Groundwater Order, Solutia plotted and contoured, in its January and May 2000 groundwater sampling events, the Total VOC and Total SVOC concentrations for the shallow, middle and deep hydrogeologic units. The results showed VOCs in the groundwater from the W.G. Krummrich Plant to the River. The groundwater concentration highs were at the W. G. Krummrich Plant and Site R and to a lesser extent Site O. (See Figures 4.a-i.)

Ecology and Environment (E & E) found in its 1998 report "Sauget Area 2 Data Tables/Maps for EPA Region V," that isoconcentration maps show, after reviewing

groundwater data from several of the source areas, including the RRG/Clayton facility, that groundwater concentration highs were found in the shallow wells at Site O and R (upgradient and downgradient of the RRG/Clayton facility). (Groundwater Order, ¶ 13.)

At Site R, Solutia's groundwater sampling reflected a distinct vertical stratification of Total VOC and Total SVOC concentrations, decreasing with depth. U.S. EPA found that this distinct vertical concentration gradient, with the highest detected concentrations in the upper portion of the saturated zone, indicates that the "waste material and/or DNAPL in the shallow unit" at Site R is still acting as a source that impacts groundwater quality. (See Groundwater Record of Decision at pages 22-23.)

### **Comparison of Select Groundwater Sample Highs**

Shallow, intermediate and deep groundwater samples show very high levels of contaminants at the W. G. Krummrich Plant and Site R, with lower, but still significant concentrations at Site O. (See Figures 4.a-i, the total SVOC and VOC isoconcentration figures from the Groundwater Record of Decision and the distribution of total VOCs and SVOCs from CA 750 Migration of Contaminated Groundwater Under Control, W.G. Krummrich Plant, Sauget, Illinois, prepared by URS, July 22, 2003 ("Krummrich Groundwater Report").)

On December 9, 2005 the Sauget Group sent a letter to U.S. EPA urging that the RRG/Clayton Chemical parties be put on notice for groundwater contamination at Sauget Area 2. Shallow groundwater information provided by their "litigation expert" focusing on benzene levels in the groundwater at the RRG/Clayton Site, along with a few other constituents, was presented to U.S. EPA. For example, the Sauget Group focused on benzene samples found in the shallow groundwater beneath the process area. As demonstrated in the chart below, the highest level of benzene found at the RRG/Clayton Site pales by comparison to the highest level found at the W.G. Krummrich facility, upgradient of RRG/Clayton, which utilized benzene in its manufacturing processes. No attempt was made to calculate or compare the mass loading to groundwater from the RRG Clayton Site or to compare it to other source areas including the W.R. Krummrich facility.

<b>Constituent</b>	<b>Depth</b>	<b>RRG/ Clayton *</b>	<b>W.G. Krummrich Plant **</b>
Benzene	Shallow	21,000	1,600,000
Chlorobenzene	Shallow	10,000	350,000

\*Data (in ppbs) from December 9, 2005 Sauget Group letter to U.S. EPA.

\*\*Data (in ug/l) from CA 750 Migration of Contaminated Groundwater Under Control, W.G. Krummrich Plant, Sauget, Illinois, prepared by URS, July 22, 2003 ("Krummrich Groundwater Report").

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(See also Figures 4.a-i, the Sauget Area total SVOC and VOC isoconcentration figures and SVOC and VOC distribution.)

Additional information and data relating to upgradient and downgradient sources, backflow, and effect on the RRG/Clayton Site will be presented at the meeting with U.S. EPA.

### **RRG/Clayton Site – Operations**

Historically, various operations were conducted at the RRG/Clayton Site prior to the solvent recycling operations by RRG/Clayton. The Site was used as a railroad repair facility, an industrial waste incinerator, a crude oil (topping) refining operation, and a Sigma Chemicals waste operation. (See Groundwater Order and Potentially Responsible Party Investigation Report For Clayton Chemical Co./Resource Recovery Group Site (The "Clayton/RRG Site") submitted on 8/25/2004 to U.S. EPA by the RRG/Clayton Liquids Group.) Two response action activities have been conducted at the RRG/Clayton Site by various PRPs who were RRG/Clayton Customers, including both a liquids and a soils removal action (nearing completion). These response activities will substantially prevent any future impact to groundwater from the RRG/Clayton Site.

Although the RRG/Clayton recycling facility operated for approximately 30 years, the RRG/Clayton Customers, who allegedly sent materials to RRG/Clayton, sent no materials until after RRG/Clayton became a RCRA permitted facility and, in some cases, only within the few years just before the facility ceased operation. According to the deposition testimony of former employees of RRG/Clayton, secondary containment had been installed and operational procedures had been implemented to minimize or prevent the potential for a release to the environment. There were no still bottoms, drums, or liquids disposed on-site or in Sauget Area 2 after RRG/Clayton became a RCRA facility. The testimony makes clear that, to the extent there were any releases outside of the secondary containment during that time period, only a very small volume of material would have been involved. (See Attachment B, Memorandum Re: Summary of former Clayton Chemical employee depositions.)

As the information provided in this letter from U.S. EPA's records reflects, the impact on Sauget Area 2 groundwater from the RRG/Clayton facility's operations, if any, is negligible in comparison to the other source areas. To the extent there is any impact on the Sauget Area 2 groundwater from the RRG/Clayton Site, it is due to historic site activities that long predated the RRG/Clayton Customers' involvement.

Moreover, releases, if any, from the materials sent to the RRG/Clayton Site by the RRG/Clayton Customers beginning in 1980 were not from significant spills but rather in the nature of drippage which would have been substantially contained by

secondary containment. The RRG/Clayton Customers no doubt qualify not only as *de minimis* generators but also as *de micromis* generators with respect to the Sauget Area 2 groundwater unit.

### **Not Premature**

Clearly, EPA's consideration of a *de minimis* settlement is no longer "premature." Several response actions have been completed at Sauget Area 2 over the past nearly 30 years, including: 1) in 1979, Pharmacia constructed a clay cover on Site R; 2) in 1980, the Village of Sauget closed in place four clarifier sludge lagoons at Site O; 3) in 1985, Pharmacia installed a 2,250 foot rock revetment along the Mississippi River bank adjacent to Site R; 4) in 1995, U.S. EPA conducted a removal action at Site Q, excavating drums and soils contaminated with PCBs, organics and metals; 5) in 1999-2000 another removal action was conducted at Site Q by EPA excavating over 3,000 drums and 17,032 tons of waste; 6) in 2003, Solutia began construction of a groundwater barrier wall between Site R and the Mississippi River and of two extraction wells. In addition, the RRG/Clayton Site Group completed a liquids removal action at RRG/Clayton to prevent any potential release of liquids from process equipment and storage at RRG/Clayton and is nearing completion of a soils response action.

Numerous studies have been undertaken with respect to the W.G. Krummrich Plant, the RRG/Clayton Plant, Sauget Area 1 and Sauget Area 2. (See the list of studies in the Groundwater Record of Decision, pages 9-10.) Two draft Remedial Investigation Feasibility Studies have been prepared for the Sauget Area 2 Site. In 1994 Monsanto submitted the first RI/FS to the State of Illinois. On January 30, 2004 the Sauget Group submitted a draft RI/FS to U.S. EPA and in 2005-2006 the Sauget Group conducted three phases of supplemental investigations. A groundwater Focused Feasibility Study was submitted to U.S. EPA by Solutia in 2002.

There is also a long history of enforcement actions associated with the Sauget Area 2 Site dating back to 1992. (See Section 2.4 Enforcement History, Groundwater Record of Decision, pages 10-11.) More recently, U.S. EPA initiated the following actions:

- On May 25, 2005, U.S. EPA sent demand letters to 21 PRPs for \$3.5 million in costs incurred in 1999 and 2000 by U.S. EPA for removal actions for releases or threatened releases at Site Q;
- On October 4, 2006, U.S. EPA filed a complaint and lodged a Consent Decree settling for \$2,601,594.20 with the 21 PRPs who received the May 25, 2005 demand letter for past costs related to Site Q removal actions; and

- On December 22, 2006, U.S. EPA sent a General Notice Letter to 43 alleged customers of the RRG/Clayton solvent recycling facility related to groundwater impacts.

In addition, the State of Illinois has also instituted a number of enforcement proceedings. Most recently, the State filed, in 2005, a lawsuit against a number of PRP's seeking recovery of its costs.

Several of the recipients of the December 22, 2006 General Notice Letter referenced above individually asked for the basis of U.S. EPA's determination that they are PRPs with respect to the Sauget Area 2 groundwater. U.S. EPA sent out a general letter in response, attaching and referencing, without explanation, the 1,879-page 2004 Draft Sauget Area 2 RI/FS and tables and figures from three phases of supplemental investigations as the basis for concluding that the RRG/Clayton Customers are PRPs.

In January 2007, the Sauget Group wrote to the "Clayton Chemical Parties" (no attached list of parties) "in care of" Sharon Newlon at Dickinson Wright, who is performing certain coordination functions for the PRPs performing the soil cleanup at the RRG/Clayton Site. The Sauget Group wrote that "it had come to [their] attention" that certain members of the Clayton Chemical PRP Group had received a General Notice of Potential Liability Letter. The letter from the Sauget Group proceeded to extend an offer to join the Sauget Group. The price of membership was to agree to an interim allocation of \$39 million in past costs and estimated future costs of \$3 million per year which, utilizing their formula, could be as high as \$598,000 on an individual "PRP" basis. In addition to the interim allocation, the "PRPs" would be expected to participate in an Alternative Dispute Resolution ("ADR") process, including discovery, that has been going on for several years. An individual "PRP", however, could not join the Sauget Group. The offer was only good if a minimum of 25 parties joined, including a substantial number of the alleged RRG/Clayton "top volumetric" contributors.

One week later, Pharmacia and Solutia sent a demand letter to certain of the RRG/Clayton Customers for \$35.5 million of cleanup costs. Pharmacia and Solutia asserted that EPA had determined that RRG/Clayton's operating practices over the years have caused extensive contamination in the soil of the RRG/Clayton facility and in the groundwater beneath the facility and that contaminated groundwater is migrating downgradient from the RRG/Clayton property into the Sauget Area 2 Sites and directly toward the underground wall and extraction wells. They further asserted that they were confident that a court would allocate \$10 to \$15 million to RRG/Clayton for the costs of the Sauget Area 2 groundwater remedy. Pharmacia and Solutia attached a draft complaint to their demand letter and indicated that they would hold off filing the complaint if the recipient participates in their ongoing nonbinding ADR, which includes all forms of discovery: questionnaires, document exchanges, depositions, experts and an allocation opinion to be rendered by a retired judge. This allocation process has

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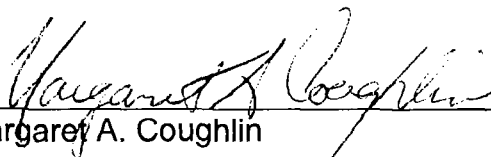
been ongoing for several years and, although the Sauget Group has offered to make copies of deposition transcripts, discovery and documents previously exchanged available to the RRG/Clayton Customers, much of the work would not have focused on the defenses or perspective of the RRG/Clayton Customers. Moreover, this process is not designed for *de minimis* contributors to the Site. The transaction costs that would be involved in coming up to speed and preparing for an adjudicatory format allocation would be considerable, as compared to a realistic settlement reflecting the very minor contribution, if any, to Sauget Area 2 groundwater contamination, by the RRG/Clayton Customers.

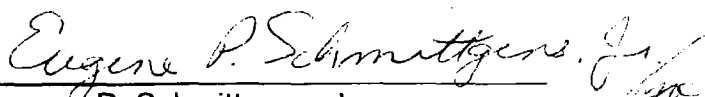
Several customers of RRG/Clayton who utilized the RRG/Clayton facility services prior to the 1980's, during a period of time when the facility's still bottoms arguably were being disposed in portions of the Sauget Area 2 Site, have already been sued by one or more parties in ongoing litigation. They can attest to the amount of expenses that they have incurred in litigation, as compared to ultimate settlements that have been, or could have been, entered into. Those costs could have provided a significant source of funding to U.S. EPA for past and future oversight costs as well as response costs. We'd like to avoid a repeat of that scenario. The RRG/Clayton Group is faced with threats of imminent litigation. A *de minimis* settlement at this time is appropriate and would effectuate the purpose of U.S. EPA's and Congress' policy to enter into these agreements when they can be of some benefit before the minor contributors have incurred substantial transaction costs.

\* \* \*

Based on the foregoing, and consistent with EPA's policies, we strongly urge EPA to meet with the undersigned RRG/Clayton Customers as promptly as possible so we can commence discussions of the parameters for *de minimis* and *de micromis* settlements. We are prepared to provide additional information, technical and otherwise, at such a meeting to facilitate timely and effective negotiations. Please call Meg Coughlin at (248) 433-7272 to set up the meeting.

As Authorized on Behalf of the  
Parties Listed on Attachment A:

  
Margaret A. Coughlin

  
Eugene P. Schmittgens, Jr.

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MAC/l/c  
Enclosures

cc: Debra Klassman, Office of Regional Counsel, U.S. EPA, Region 5  
Tom Turner, Office of Regional Counsel, U.S. EPA, Region 5  
Linda Mangrum, Emergency Enforcement & Support Section,  
U.S. EPA, Region 5  
List –Attachment A

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**ATTACHMENT A**

<b>RRG/CLAYTON PARTIES REQUESTING EPA MEETING TO DISCUSS <i>DE MINIMIS</i> SETTLEMENT FOR THE SAUGET AREA 2 GROUNDWATER SITE</b>		
	<b>COMPANY</b>	<b>CONTACT INFORMATION</b>
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B

## **ATTACHMENT B**

### **MEMORANDUM**

**RE: Summary of former Clayton Chemical employee depositions**

**DATE: May 9, 2007**

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#### **INTRODUCTION**

This Memorandum contains a summary of the deposition testimony of the following former Clayton Chemical employees regarding potential evidence of releases occurring between 1980 and 1998:

- Dave Wieties, employed from August of 1980 to November 1988;
- Ronald Entrup, employed from January 1971 to December 1983;
- Bud Haney, employed from approximately the mid-1960's to 1988;
- Ronnie Wyatt, employed from 1965 until the facility closed in 1998.

The recent demand letter received by some of the alleged former RRG/Clayton customers from the Sauget Area 2 Group parties, wherein the Sauget Area 2 Group parties allege the former RRG/Clayton Chemical Customers are responsible for costs associated with the remediation of the groundwater contamination at the Sauget Area 2 sites, relies on two theories. The first theory arises from documentary evidence that still bottoms from the Clayton Chemical solvent recycling process were disposed at Site Q, a municipal landfill in Sauget Area 2, and subsequently, for a brief period of time, in pits dug south of the Clayton Chemical facility. The second theory is premised on the allegation that materials were disposed on the Clayton Chemical property via spills and leaks to the soils and that those materials ultimately made their way to the groundwater underlying the RRG/Clayton facility.

As set forth in greater detail below, the deposition testimony of several former employees reveals that direct disposal of still bottoms in the Sauget Area 2 landfills ceased well prior to 1980. In addition, any releases after 1979 from spills and leaks were either immediately addressed or were minimal. The testimony is clear that business opportunity and increased awareness of environmental responsibilities led to operational changes that maximized material capture and minimized potential releases at the RRG/Clayton facility.

**A. Direct Disposal to Sauget Area 2 Landfills.**

The first theory of recovery is unsupported as it pertains to the members of the RRG/Clayton customers who began using the facility after 1980. Dave Wieties, the former Environmental Plant Manager for RRG/Clayton, testified that there was no disposal of still bottoms into the Sauget landfills at any time during his employment from August 1980 to November 1988. When asked whether during his employment there were any disposal activities into any areas on-site, Mr. Wieties replied "certainly not." Deposition of David Wieties, October 19, 2004, at 78. Similarly, when asked about the years during which there was direct disposal at the Sauget landfill, he replied "[a]ccording to the form, from 1962 - 1975." *Id.* at 136.

Mr. Wieties' testimony was echoed by other former Clayton Chemical employees. Ronald Entrup, an employee from January 1971 through December 1983, stated that in the early 1970s, when he started his employment there, "when the tank truck was full [of still bottoms], it was taken across the levee to the landfill and dumped in the trash." That practice, however, stopped after a couple of years. Deposition of Ronald Entrup, May 7, 2003 at 379-81.

Bud Haney, an employee of Clayton Chemical beginning in the late 1960s, was asked by counsel for Solutia, one of the main Sauget Ares 2 Group parties, about the disposal of still bottoms::

- Q: The still bottoms, you said those went to the landfill and we were talking prior to 1975.
- A: Uh-huh.
- Q: After 1975, what happened with the still bottoms, do you recall?
- A: Oh, time - - time wise with the thin film evaporator, the still bottoms become - - I don't know if you want to call it useful. *A lot of it went to the cement kilns and it was incinerated because it didn't have the water in it that the old still bottoms did, and a lot of them went to - - I don't know about a lot of them. I think time-wise more of them went to other landfills through EPA permits.*

Deposition of Bud Haney, May 25, 2004, at 53 – 54 (emphasis added).

Mr. Haney was asked how long the pits located near the Clayton Chemical facility were in operation. He responded that they were used for less than five years stating it "was fairly short-termed." *Id.* at 68.

Ronnie Wyatt, a Clayton Chemical employee from 1965 until the plant closed in 1998, stated that he took still bottoms to the Sauget landfill for disposal in the 1960s and maybe the early 1970s. Deposition of Ronnie Wyatt, May 24, 2004 at 45. He went on to state the RRG/Clayton facility stopped using the tank truck for still bottom disposal "sometime in the 70's," at which time the still bottoms went to a tank and were "hailed out by a carrier." *Id.* at 49 - 50. He also testified he thought the still bottoms "were dumped in a pit back behind the plant at one time." *Id.* at 50. The time frame for this disposal was while the tank truck was still in use. *Id.* He further stated this occurred for "maybe a year, if that." *Id.* at 51.

Mr. Entrup further described the pits. He said they were located southeast, along the railroad tracks, south of the drum dock. Entrup Dep. at 401. They were dug

sometime after 1971 and were used as a "stopgap" after the Clayton Chemical facility ceased disposing of the still bottoms at the Sauget landfill until they found another disposal site. Entrup Dep. at 403-04. His best estimate was that the pits were used for maybe a year in the mid-1970s. Entrup Dep. at 404-05.

It is obvious the Sauget Area 2 Group parties' first theory of recovery is unsupported because disposal of RRG/Clayton still bottoms in the Sauget Area 2 site ceased sometime between 1971 and 1975, well before those RRG/Clayton Customers that received the recent demand letter began using the Clayton Chemical facility.

#### **B. Evidence of releases, leaks and overfills**

There is significant evidence that the on-site contamination at the RRG/Clayton facility predated the 1980s. The reviewed deposition testimony indicates that while, prior to the passage of RCRA, waste was not handled as carefully as it could have been, the facility operated in general compliance with RCRA after the Act became effective. Releases, though few, were contained or addressed as they occurred.

The improvements in RRG/Clayton's waste handling practices resulted from increased awareness, business concerns and environmental responsibilities, all leading to operational changes that maximized material capture and minimized potential releases. For example, Mr. Entrup, in response to a series of questions during his deposition, described these changes:

A: Not only Clayton Chemical but everywhere. Pollution was not an issue. Environmental concerns were not an issue in '71, and we see the results of that all over the world today. But as time went on, you know, *we began to realize that this was not correct, you know. So, let's start catching some of this stuff. Some of it was caught and some of it wasn't because in many cases there was no mechanism to catch it, but as time went on, as we replaced the pipelines, installed new stuff, we started to think, well, now, if we*

*want to drain this, how are we going to drain this, how are we going to capture this material, you know. To some degree this was product you were throwing away. You could have sold it. So, we wanted to capture it.*

You know, again, as the environmental concerns – as that concern developed as well as economic concerns, we then began to look at capturing this stuff and doing something with it rather than just letting it go.

Entrup Dep. at 482-84 (emphasis added).

Other Clayton Chemical employees similarly testified about the increased environmental concerns, the use of containment, and lack of spills and releases. In the course of his May 24, 2004 deposition, Mr. Wyatt was asked whether there were spills when a pump stopped working. He stated no, because it “was all contained.” Wyatt Dep. at 21. Similarly, when asked about valves on trucks leaking, Mr. Wyatt stated that he could recall no such instance. Further, when removing hoses from trucks, “maybe a cupful come out, *but we always had a pan or a bucket sitting underneath to catch that.*” He did acknowledge that “probably” a time or two a drop might fall to the ground, but he could remember no particular instance. *Id.* (emphasis added).

Mr. Wyatt could also not recall any leaks in hoses, nor any leaks from tanks to the ground and when unhooking hoses, they “usually had a pan under” that. *Id.* at 21, 66. He acknowledged that drums on trucks during the 1980s through the 1990s might have leaked, but that such leaks remained in the trucks or trailer. He could remember no time when any leakage reached the ground, nor when any drums burst open or were dropped off the back of the truck. *Id.* at 72. Nor was there any leakage from drums or pumps during a transfer of materials. He remembered no times when any solvent dripped on the ground. *Id.* Even with respect to pumps, Mr. Wyatt stated that “most of the time it didn’t

go to the ground because it would be caught before it got that far and most of the pumps were in pans to contain leaks.” *Id.* at 74. Finally, Mr. Wyatt could not recall any instances of overfilling drums or tanker trucks. *Id.* at 76.

Mr. Entrup's testimony contains similar statements. When filling drums or a tank truck, there would be a bucket or drip pan. Entrup Dep. at 460-61. Any drains in the system would also have a bucket or drip pan or were located within a concrete diked area. *Id.* at 479-80. Drums, as a practical necessity, had to be handled on concrete, not dirt. *Id.* at 468-70. Further, Mr. Entrup testified three different times during his deposition that he recalled no major spills during his twelve years at the RRG/Clayton facility. *Id.* at 169, 427, 432.

Another former employee of Clayton Chemical, Mr. Haney, did not recall any leaks from any pipes, nor could he recall any instances of overfilling or spillage from tanker trucks. Haney Dep. at 56.

Finally, Dave Wieties, the former environmental manager at Clayton Chemical, was equally assertive about releases at the property, saying there were only two or three while he was there. Wieties Dep. at 22. The first was the spill of acetone which was fully contained. *Id.* The second involved a release of lacquer thinner contaminated with paint from an underground pipe line. The spill was immediately remediated. *Id.* at 22-23. Mr. Wieties also recalled a release from a tank that contained still bottoms. A valve failed and there was a release onto a concrete slab. He did not know if it reached any soil. *Id.* at 26-27.

Mr. Wieties testified that leaks occurred from pumps, valves and hose disconnects occurred, and not all were in secondary containment. *Id.* at 37. However, catch basins

were used and while they may not have caught everything, Mr. Wieties could not recall any specific releases. *Id.* at 38. In fact, Mr. Wieties summarized his feelings regarding releases to the soils during his tenure as follows:

A: And I'll go back to my answer that [the release from the underground pipe line] was the only reportable quantity spill that I think was released to the soil, and I can't – I can't sit here in any good conscience and say that another drop of material never hit the ground during my employment."

*Id.* at 268.

Regarding the overall condition of the Clayton Chemical site, Mr. Wieties described pre-existing contamination. He stated he and Mr. Haney believed that some of the site contamination they needed to address pre-dated Clayton Chemical operations. *Id.* at 69. He also stated there were, "prior to any environmental regulation . . . discharges from storage areas on the . . . property." *Id.* at 70. He related that others told him of discharges in the "storage and operating areas." *Id.* at 71.

Like Mr. Entrup, Mr. Wieties stated that "we were very aware of environmental regulations. We worked very diligently to make sure that no additional or continuing releases existed and very, very quickly installed the secondary containment to – preclude any release of our materials outside the – secondary structures." *Id.* at 72. The activities to install such structures were accomplished, according to Mr. Wieties "within the first six months that I began my employment. . ." *Id.*

Areas known to be contaminated and classified as a Solid Waste Management Units ("SWMU"), were described in a RCRA facility assessment. In all instances, Mr. Wieties did not provide any evidence that there were releases at each SWMU during the time he was employed by Clayton Chemical. *See generally* Wieties Dep. at 92-109.

## **CONCLUSION**

The assertions by the Sauget Area 2 Group parties in their recent demand letter to some of the former RRG/Clayton Customers are unsupported by the deposition testimony of these former RRG/Clayton employees. Any disposal of still bottoms at Site Q ended in the mid-1970s, while most of the former RRG/Clayton Customers receiving these demand letters did not begin using the Clayton Chemical site until the 1980s or later. Further, any releases occurring on the Clayton Chemical property after 1979 via spills and leaks to the soils were incidental and would at most have a negligible, if any, impact on the groundwater underlying the Clayton Chemical facility, let alone have any off-site impact on the Sauget Area 2 sites.

DETROIT 25958-199 986961v3

## FIGURES

1

Figure 1

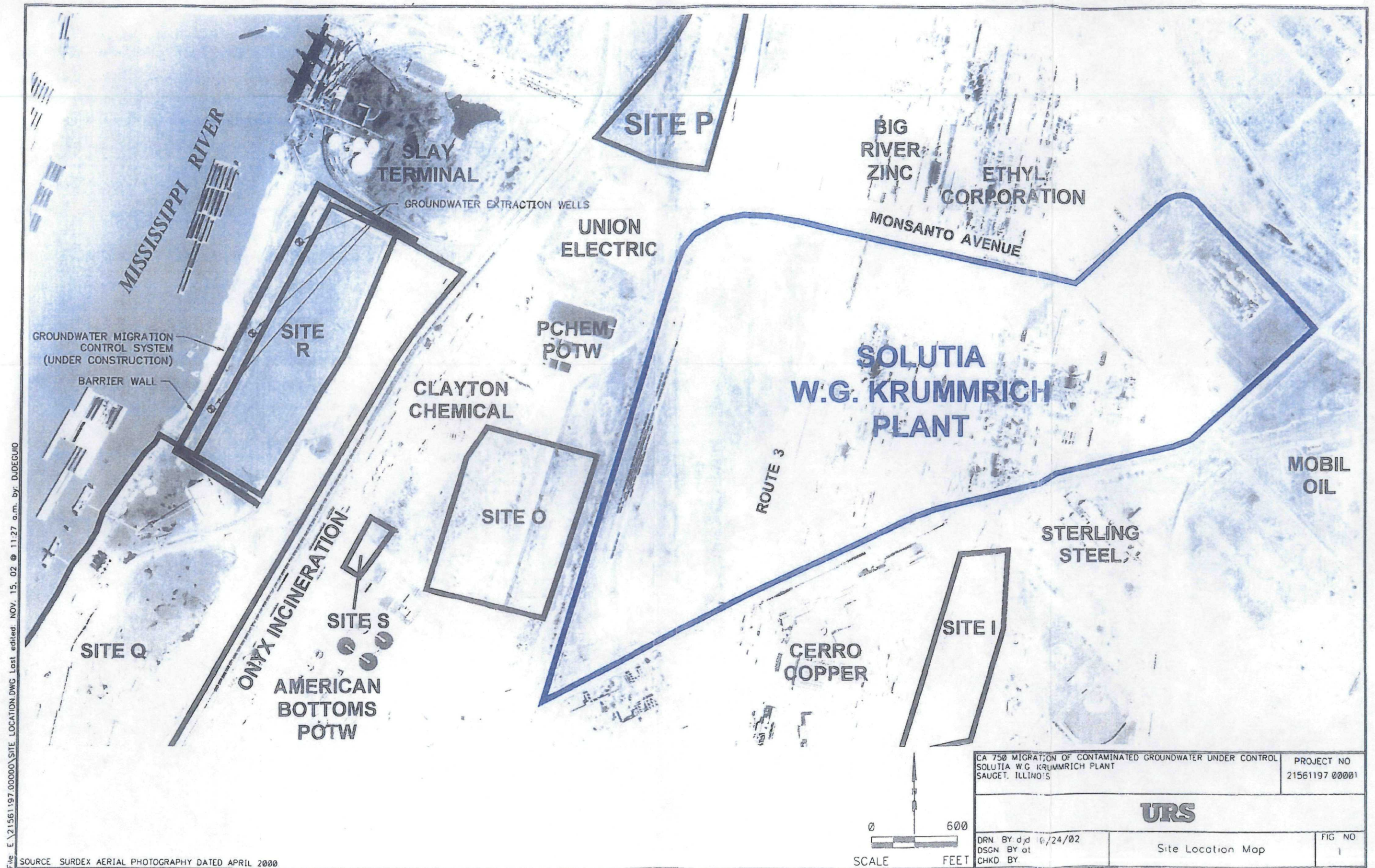


Figure 2

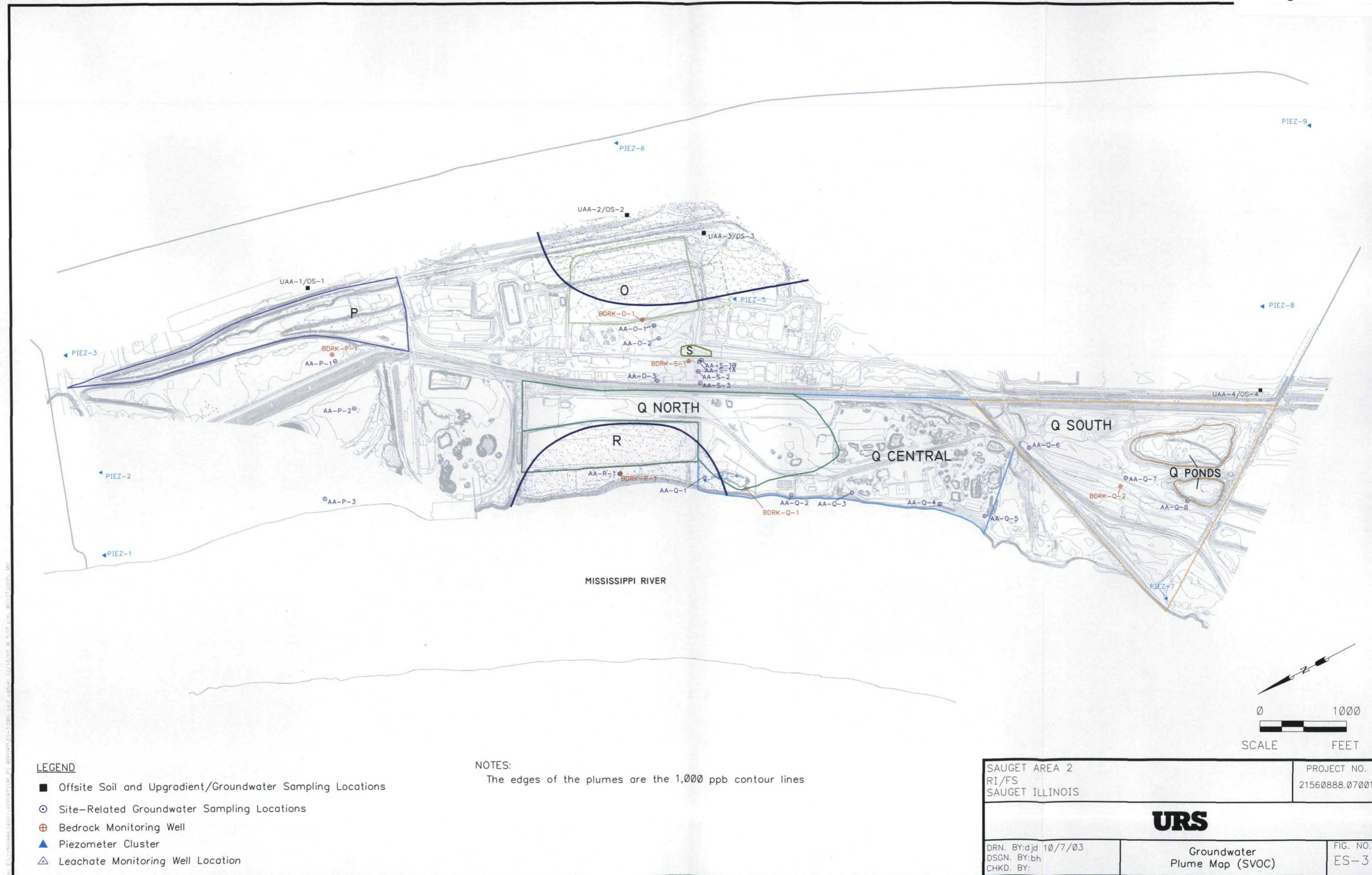
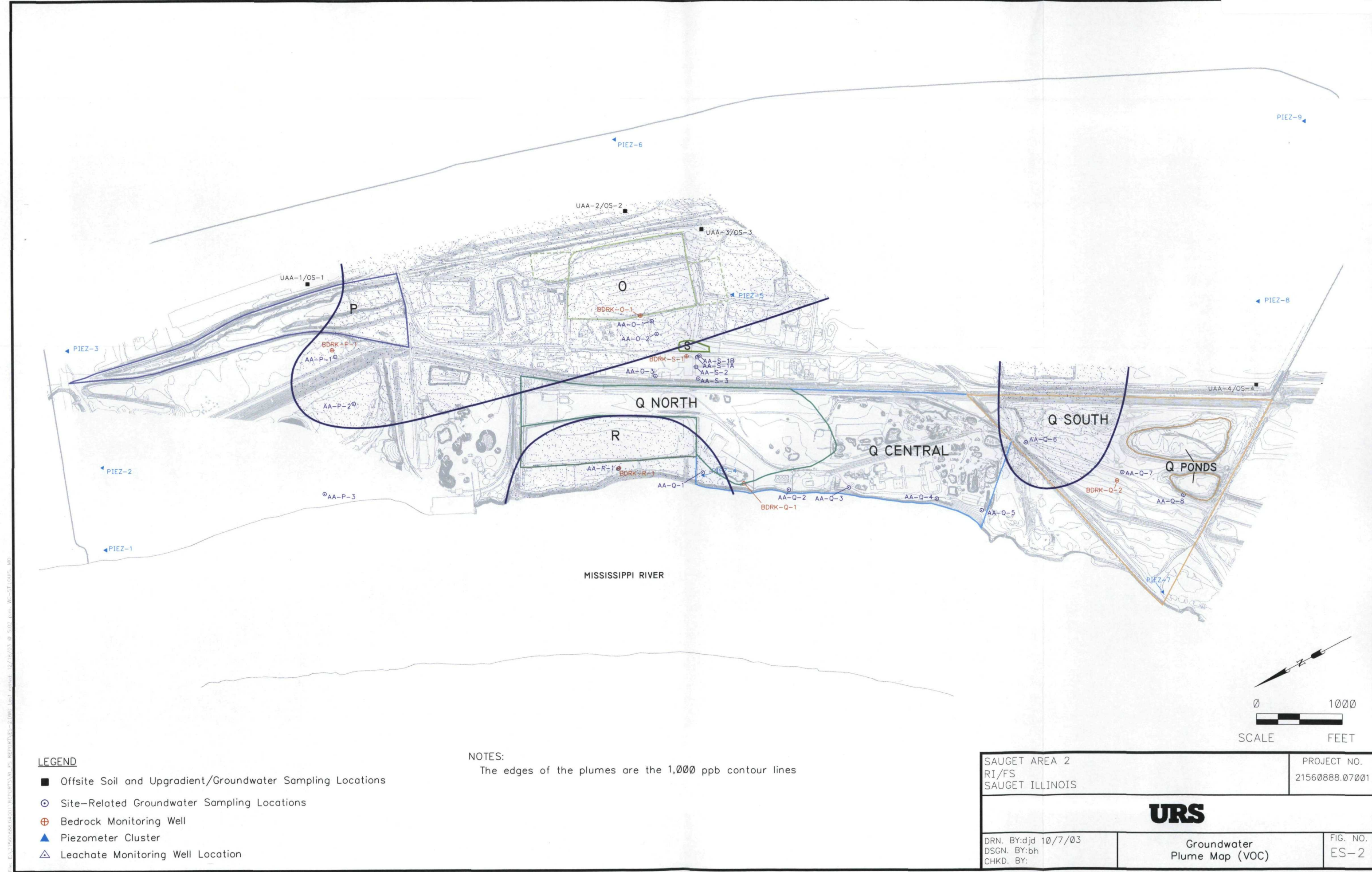


Figure 3



Sauget Area 2: Record of Decision

**Figure 5-16**

**Total SVOC Concentrations  
Shallow Hydrogeologic Unit**

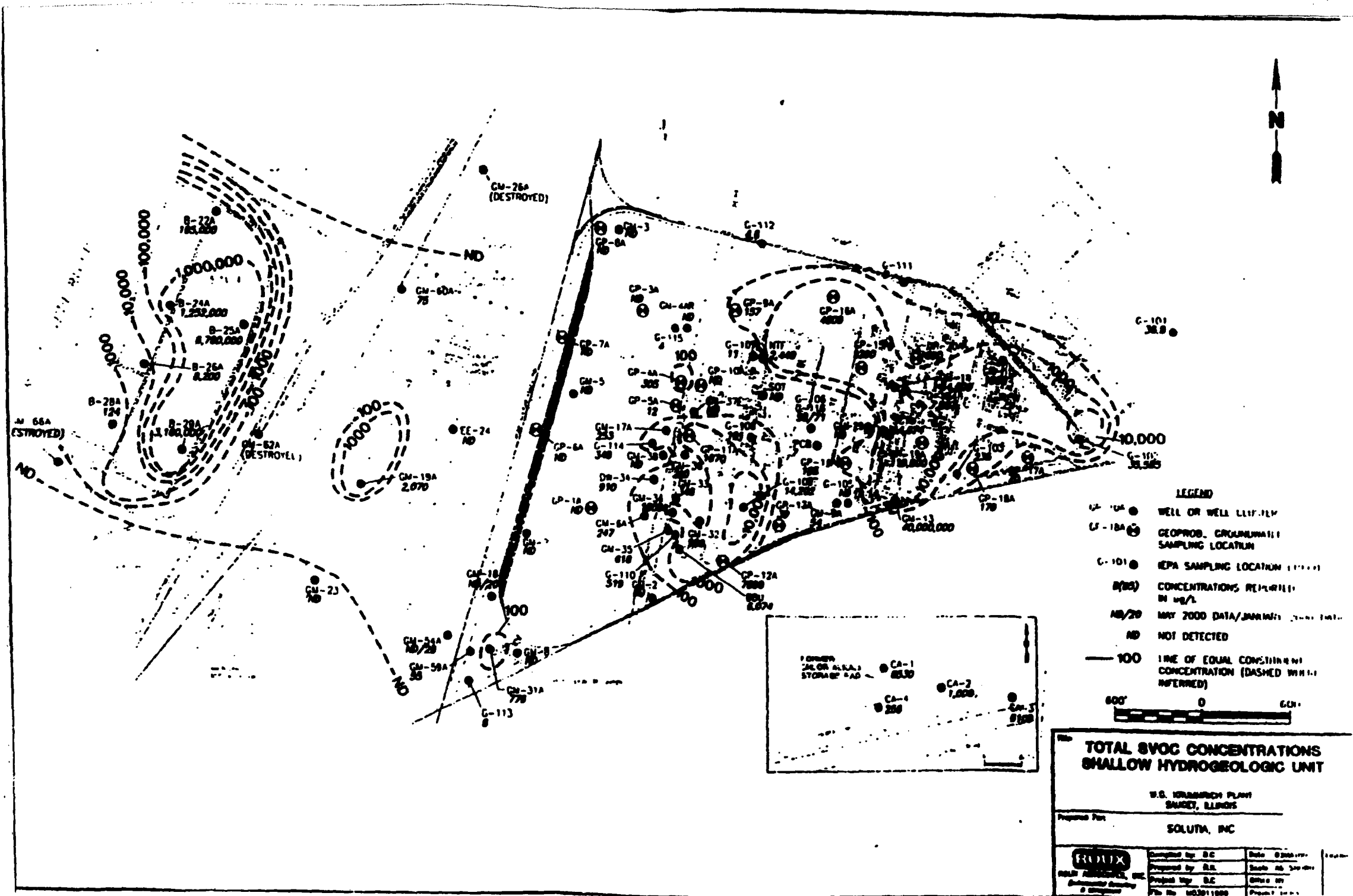


FIGURE 4A

Sauget Area 2: Record of Decision

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**Figure 5-17**

**Total SVOC Concentrations**

**Middle Hydrogeologic Unit**

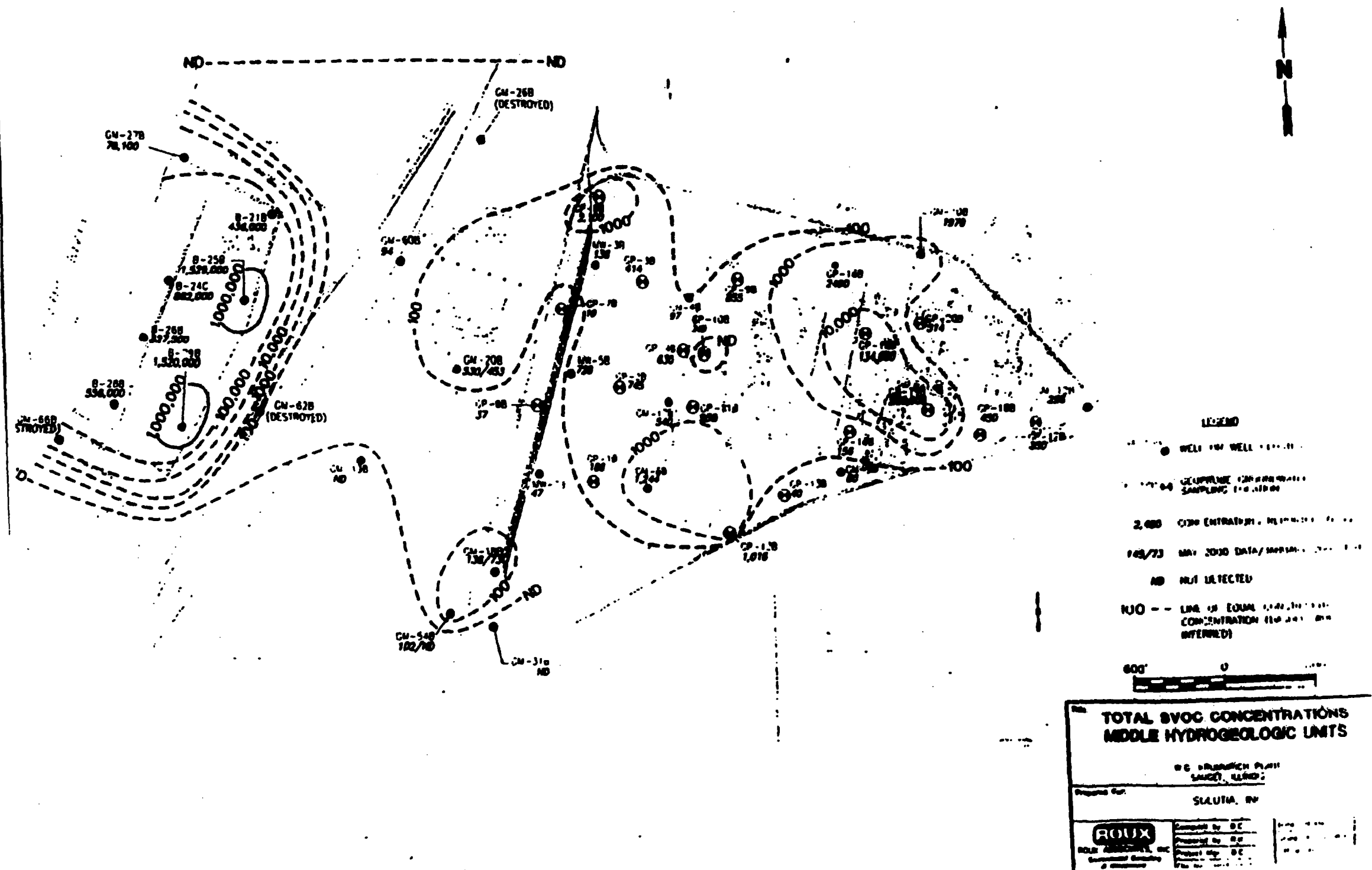


FIGURE 4B

Sauget Area 2: Record of Decision

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**Figure 5-18**

**Total SVOC Concentrations**

**Deep Hydrogeologic Unit**

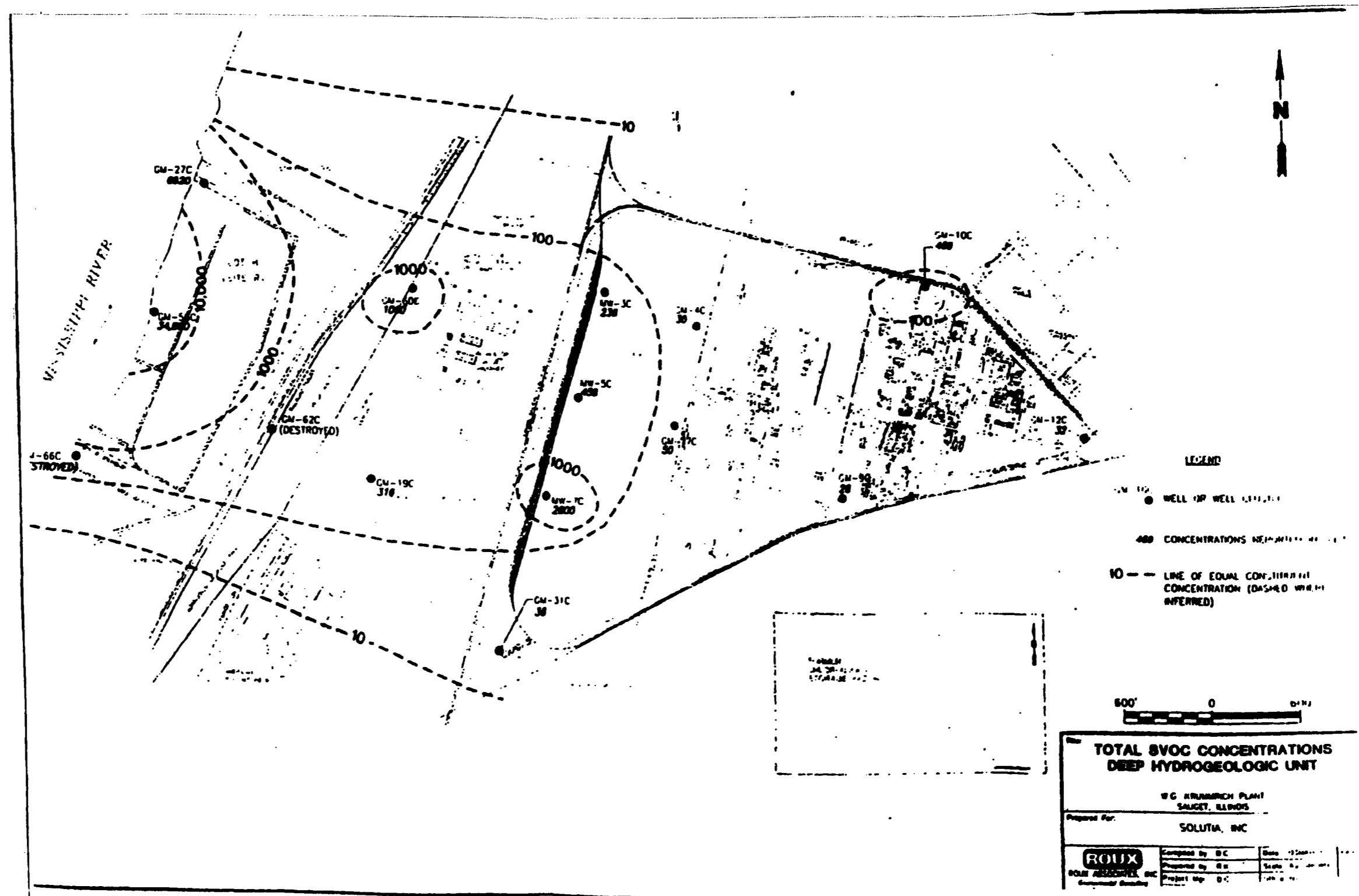


FIGURE 4C

Sauget Area 2: Record of Decision

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**Figure 5-13**

**Total VOC Concentrations**

**Shallow Hydrogeologic Unit**

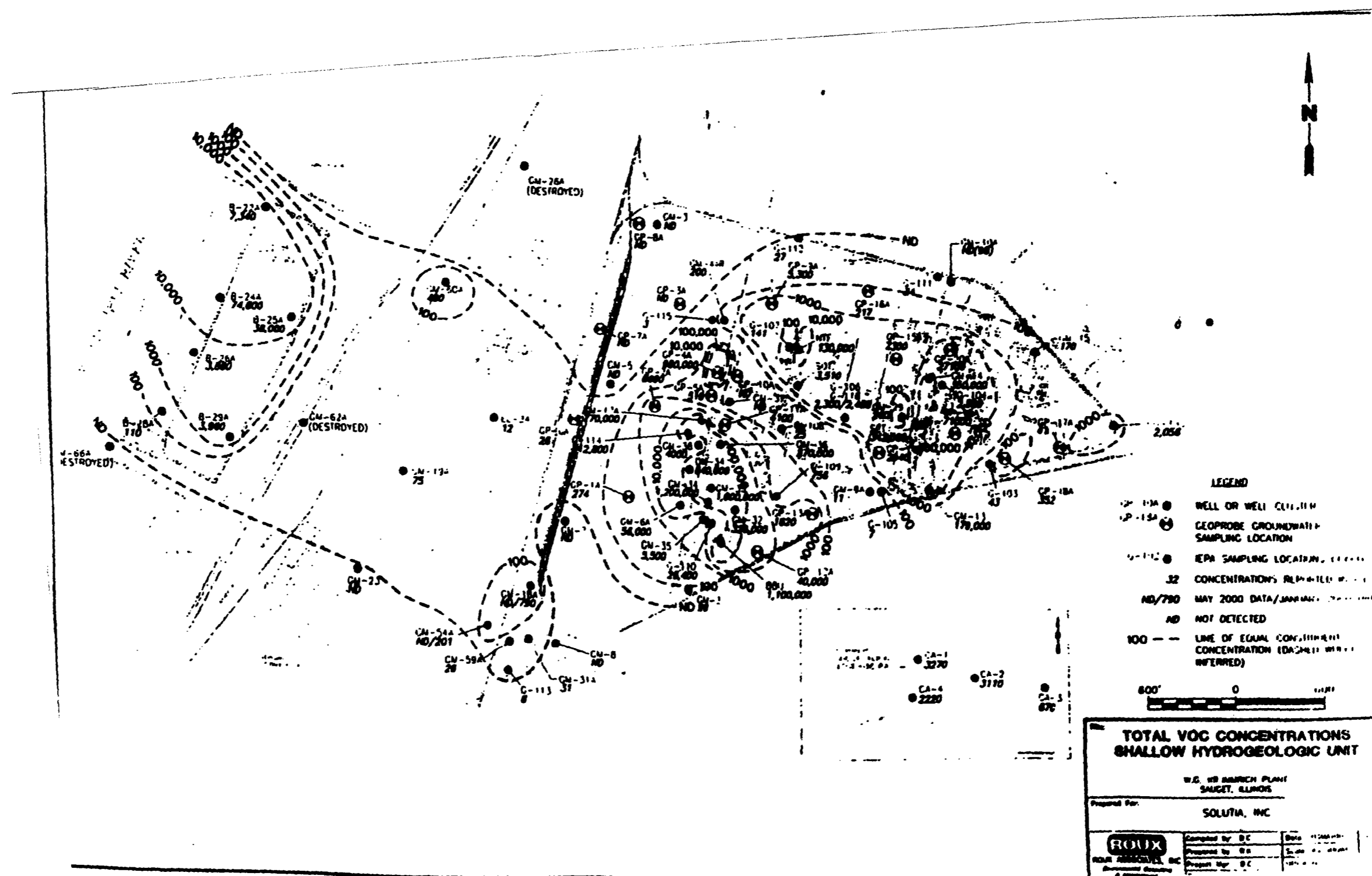


FIGURE 4D

Sauget Area 2: Record of Decision

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**Figure 5-14**

**Total VOC Concentrations**

**Middle Hydrogeologic Unit**

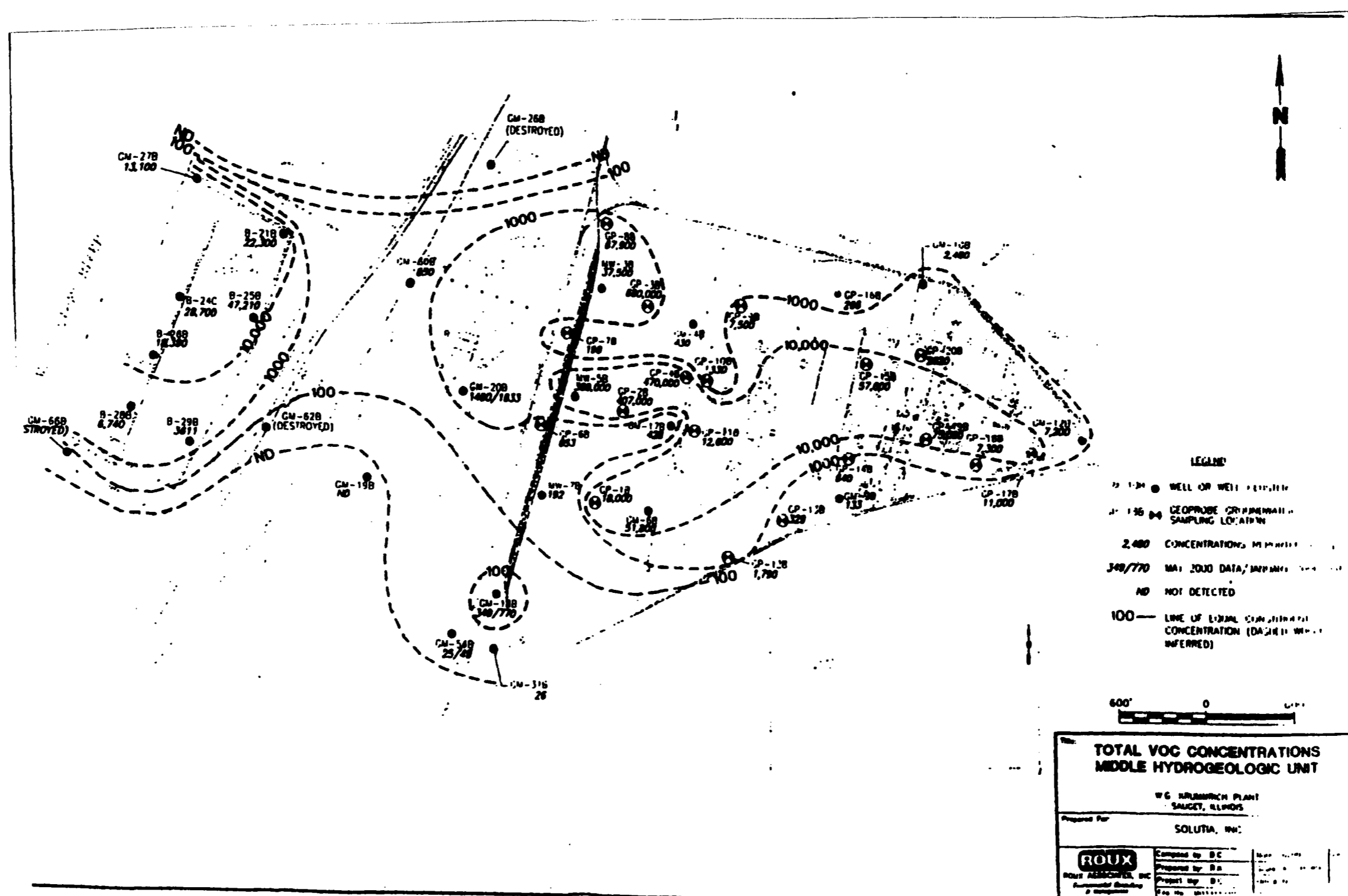


FIGURE 4E

Sauget Area 2: Record of Decision

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**Figure 5-15**

**Total VOC Concentrations**

**Deep Hydrogeologic Unit**

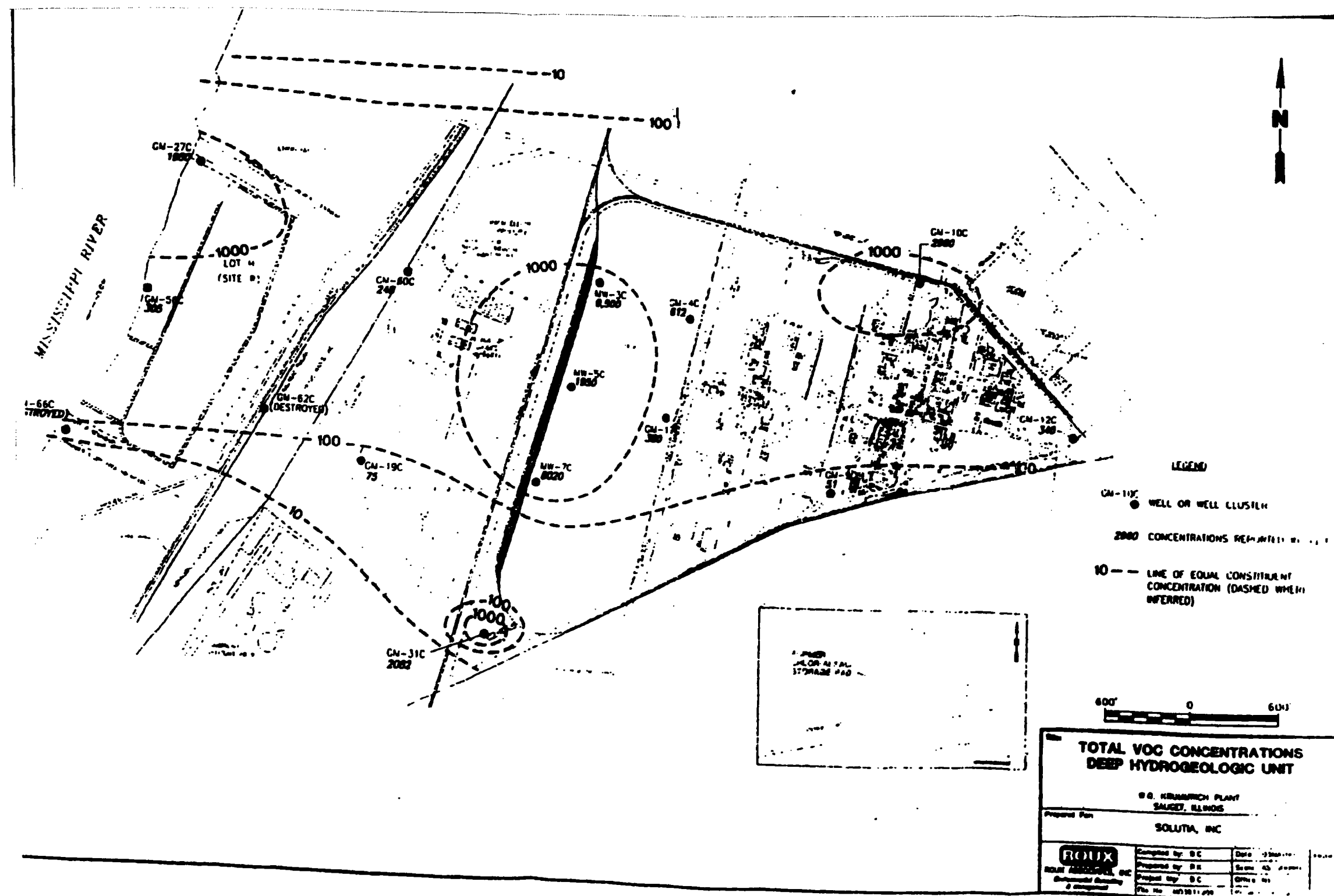
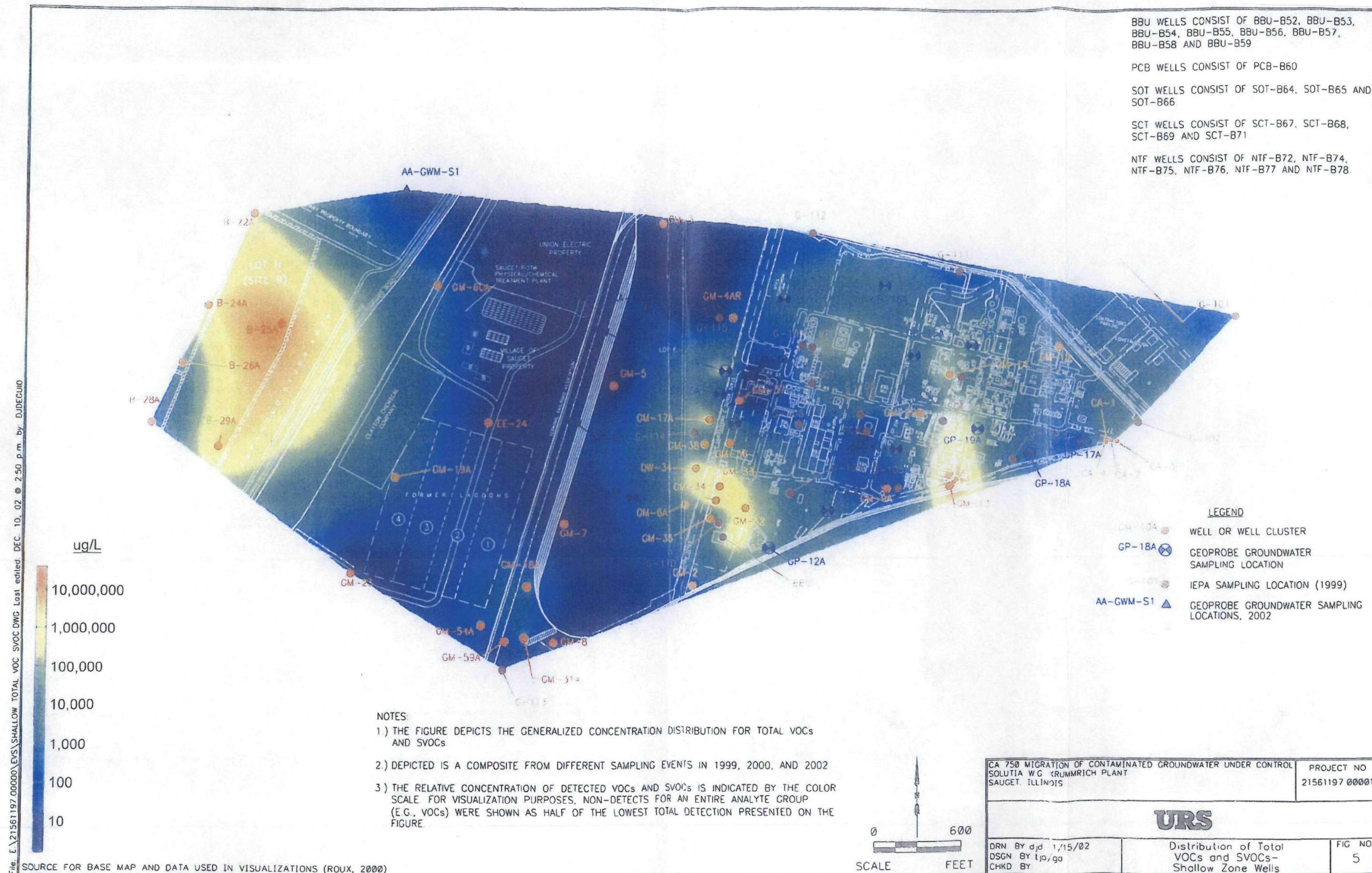


FIGURE 4F

Figure 4g



BBU WELLS CONSIST OF BBU-B52, BBU-B53, BBU-B54, BBU-B55, BBU-B56, BBU-B57, BBU-B58 AND BBU-B59

PCB WELLS CONSIST OF PCB-B60

SOT WELLS CONSIST OF SOT-B64, SOT-B65 AND SOT-B66

SCT WELLS CONSIST OF SCT-B67, SCT-B68, SCT-B69 AND SCT-B71

NTF WELLS CONSIST OF NTF-B72, NTF-B74, NTF-B75, NTF-B76, NTF-B77 AND NTF-B78

Figure 4h

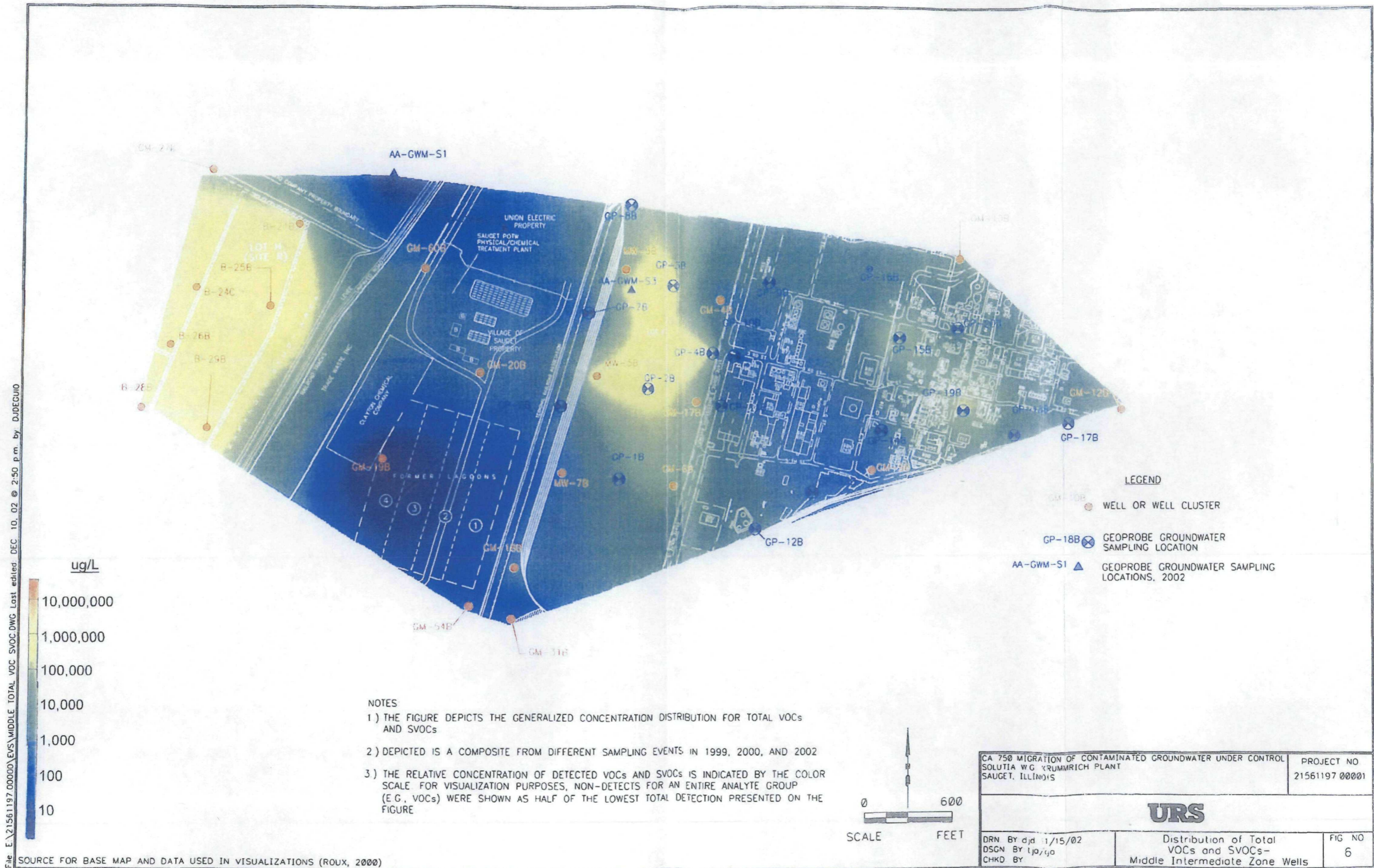


Figure 4i

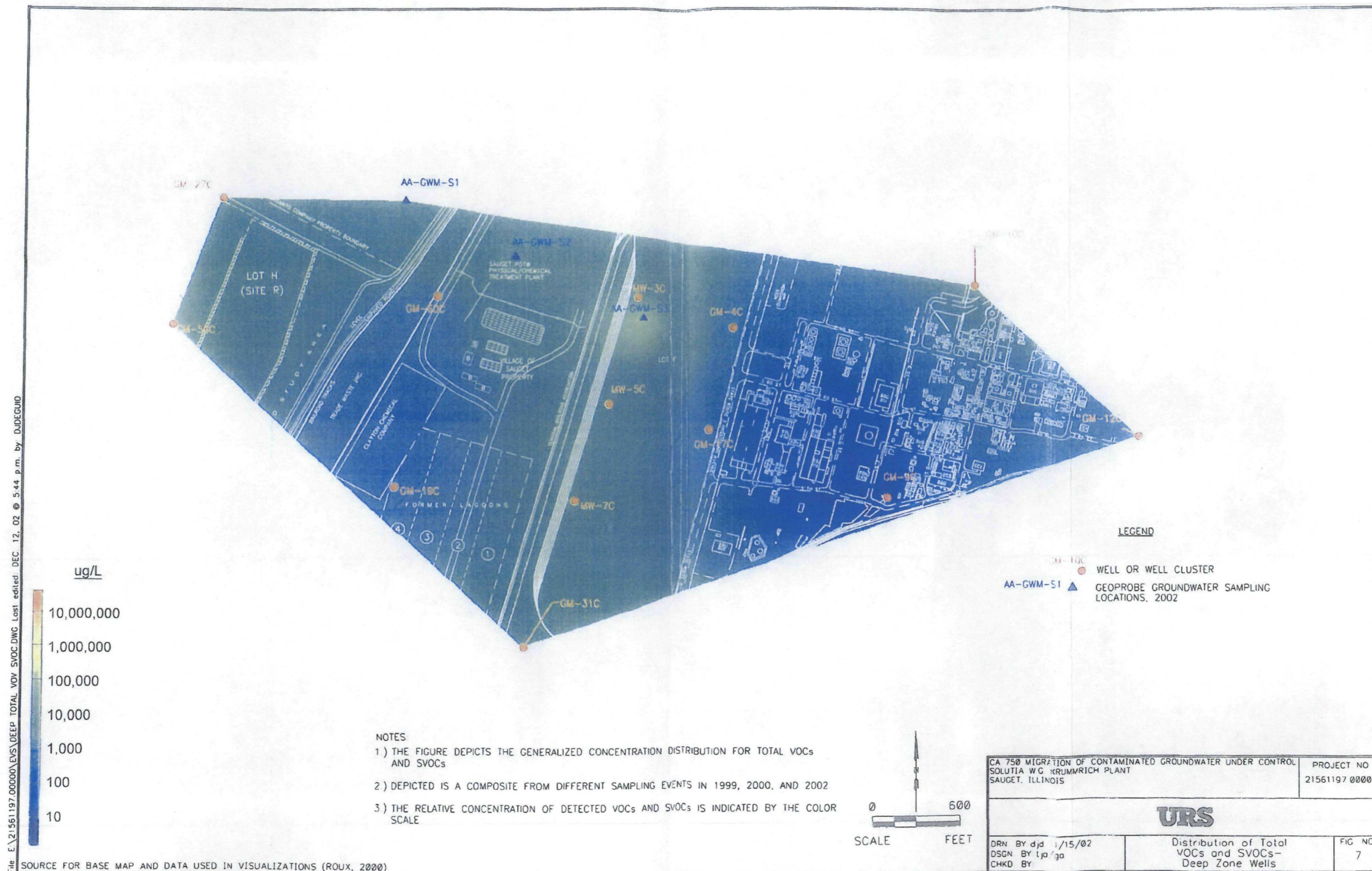


Figure 5

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